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(Agent for Komir, Inc.) and Komir, Inc.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

10 In re Case No. 19-30088 (DM)
11 PG&E CORPORATION, Chapter 11
12 - and - (Lead Case) (Jointly Administered)

13 PACIFIC GAS AND ELECTRIC
COMPANY.

Debtors.

15 G Affects PG&E Corporation
16 G Affects Pacific Gas and Electric Company
O Affects both Debtors

**CLAIMANT'S EVIDENTIARY
OBJECTIONS TO THE
DECLARATION OF JOHN RAINES IN
SUPPORT OF PG&E'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
CLAIMANT'S SECOND MOTION FOR
PARTIAL SUMMARY
ADJUDICATION**

Date: December 19, 2023
Time: 10:00 a.m.
Place: (Tele/Videoconference
Appearances Only)
United States Bankruptcy Court
Courtroom 17, 16th Floor
San Francisco, CA 94102

CLAIMANT'S EVIDENTIARY OBJECTIONS TO THE DECLARATION OF JOHN RAINES

1 Amir Shahmirza, as agent of, and acting on behalf of, Komir, Inc. (“Komir” or
2 “Claimant”), submits below evidentiary objections to the Declaration of John Raines in Support
3 of PG&E’s Memorandum of Points and Authorities in Opposition to Claimant’s Second Motion
4 for Partial Summary Judgment. (“Raines Declaration”).

5 Claimant submits the following Evidentiary Objections to both the entirety of the
6 substantive portion of the Raines Declaration and to the specific statements presented below.

7 **A. General Objections**

8 Claimant makes a general objection of relevancy to the evidence submitted, and
9 specifically objects that nearly the entirety of the proffered evidence relates to ostensible distance
10 measurements concerning an undefined “alignment” of the New Transmission Lines that is both
11 without foundation as to the purported measurements and not relevant to the fact of the changes
12 constituting the basis for Komir’s revocation of consent.

13 With respect to the objection of relevance, the extensive testimony in the Raines
14 Declaration concerning the general locational direction of the New Transmission Lines does not
15 provide any genuine issue of factual dispute with regard to the total destruction of the Old
16 Transmission Lines, the detachment of all six “circuits” and lines previously attached to those
17 Old Transmission Lines, the relocation of the New Transmission Towers laterally and 15' to 20'
18 closer to the Komir Property, and the attachment of lines to the new towers at new locations at
19 new heights.

20 With respect to lack of foundation, Declarant Raines does not state that he has ever
21 visited the site or actually conducted any measurements of any heights, whether of towers, bars,
22 or transmission lines, but states only that he examined unauthenticated LiDaR “scans” from 2012
23 and 2022 with no predicate foundation as to the purpose of those “scans,” the qualifications of
24 the persons preparing them, the purpose of the “scans,” the acceptable degree of error for
25 whatever may have been its purpose, or any other informative data.

26 With respect to the Raines Declaration being offered in violation of the Sham Affidavit
27 Rule, Claimant notes the following:

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- 3 1. Mr. Raines has not performed any prior role relative to the controversy between
4 Claimant and PG&E. This is his first appearance.
- 5 2. Mr. Raines was not employed by PG&E until March, 2020, i.e., 2 years after the
6 removal and reconfiguration of the towers and lines, when he began working as a
7 field engineer.
- 8 3. Only in January, 2023, did Mr. Raines begin working as a Transmission Line
9 Design Engineer with duties concerning 3D modeling.
- 10 4. Mr. Raines earned his Bachelor's degree in 2008, i.e., five years ago.
- 11 5. Mr. Raines does not state that he ever visited the Komir Property or performed
12 any measurements at the property so presumably he did neither.
- 13 6. Notwithstanding the foregoing, Mr. Raines expresses opinions such as "there has
14 been virtually no change in the alignment of the Transmission Lines as it extends
15 across the Komir Property," albeit without any definition of "alignment," and
16 without foundation to testify pursuant to Federal Rules of Evidence, Rules 701
17 and 702.

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1 **B. Specific Objections**

2 <u>Objection</u>	3 <u>Ground for Objection</u>
4 1. Entire Declaration of John Raines	5 (a) The content of the Declaration is 6 irrelevant. Federal Rules of Evidence, Rules 7 401 and 402. (The Federal Rules of Evidence 8 shall be referred to as "FRE") 9 (b) The Declaration violates the Sham 10 Affidavit Rule and may be ignored. (See 11 accompanying Points and Authorities) 12 Sustained: _____ 13 Overruled: _____
14 2. Declaration of John Raines, paragraphs 9 15 through 16 in their entirety including the 16 exhibits referenced in those paragraphs.	17 (a) The content of the statements is irrelevant 18 to the issue of whether PG&E holds any 19 prescriptive rights for the exclusive use of the 20 space occupied by the High Voltage 21 Transmission Lines. (FRE 401 and 402) 22 (b) Declarant Raines makes the statements 23 therein as expression of expert opinions 24 without foundation (FRE 701, 702). 25 (c) The statements of Declarant Raines lack 26 foundation as they rely upon unauthenticated 27 2012 and 2022 "scans" with no testimony 28 concerning the preparation or reliability of those reference documents and with no personal knowledge of the towers, lines, or Komir Property. (FRE 601 and California Evidence Code §702), FRE 901, including 901(b)(3)) (d) The statements of Declarant Raines lack foundation as they rely upon 2012 and 2022 "scans" as being business records without compliance with the hearsay exception therefor. FRE 803(6) (d) The statements therein are presented in violation of the Sham Affidavit Rule and may be ignored. (See Points and Authorities) Sustained: _____ Overruled: _____

1 3. Declaration of John Raines, paragraphs 9
2 through 12, inclusive, and Exhibit A.

3 (a) The content of the statements is irrelevant
4 to the issue of whether PG&E holds any
5 prescriptive rights for the exclusive use of the
6 space occupied by the High Voltage
7 Transmission Lines.

8 (b) Declarant Raines makes the statements
9 therein as expression of expert opinions
10 without foundation (FRE 701, 702).

11 (c) The statements of Declarant Raines lack
12 foundation as they rely upon unauthenticated
13 2012 and 2022 “scans” with no testimony
14 concerning the preparation or reliability of
15 those reference documents and with no
16 personal knowledge of the towers, lines, or
17 Komir Property. (FRE 601 and California
18 Evidence Code §702), FRE 901, including
19 901(b)(3)).

20 (d) The statements of Declarant Raines lack
21 foundation as they rely upon 2012 and 2022
22 “scans” as being business records without
23 compliance with the hearsay exception
24 therefor. FRE 803(6)

25 (e) The statements therein are presented in
26 violation of the Sham Affidavit Rule and may
27 be ignored. (See Points and Authorities)

28 Sustained: _____

 Overruled: _____

1 4. Declaration of John Raines, paragraph 13.

2 (a) The content of the statements is irrelevant
3 to the issue of whether PG&E holds any
4 prescriptive rights for the exclusive use of the
5 space occupied by the High Voltage
6 Transmission Lines. (FRE 401 and 402)

7 (b) Declarant Raines makes the statements
8 therein as expression of expert opinions
9 without foundation (FRE 701, 702).

10 (c) The statements of Declarant Raines lack
11 foundation as they rely upon unauthenticated
12 2012 and 2022 “scans” with no testimony
13 concerning the preparation or reliability of
14 those reference documents and with no
15 personal knowledge of the towers, lines, or
16 Komir Property. (FRE 601 and California
17 Evidence Code §702), FRE 901, including
18 901(b)(3)).

19 (d) The statements of Declarant Raines lack
20 foundation as they rely upon 2012 and 2022
21 “scans” as being business records without
22 compliance with the hearsay exception
23 therefor. FRE 803(6)

24 (e) The statements therein are presented in
25 violation of the Sham Affidavit Rule and may
26 be ignored. (See Points and Authorities)

27 Sustained: _____

28 Overruled: _____

1 5. Declaration of John Raines, paragraph 13,
2 page 3, lines 21 through 24.

3 (a) The content of the statements is irrelevant
4 to the issue of whether PG&E holds any
5 prescriptive rights for the exclusive use of the
6 space occupied by the High Voltage
7 Transmission Lines. (FRE 401, 402)

8 (b) Declarant Raines makes the statements
9 therein as expression of expert opinions
10 without foundation (FRE 701, 702).

11 (c) The statements of Declarant Raines lack
12 foundation as they rely upon unauthenticated
13 2012 and 2022 “scans” with no testimony
14 concerning the preparation or reliability of
15 those reference documents and with no
16 personal knowledge of the towers, lines, or
17 Komir Property. (FRE 601 and California
18 Evidence Code §702), FRE 901, including
19 901(b)(3)).

20 (d) The statements of Declarant Raines lack
21 foundation as they rely upon 2012 and 2022
22 “scans” as being business records without
23 compliance with the hearsay exception
24 therefor. FRE 803(6)

25 (e) The statements therein are presented in
26 violation of the Sham Affidavit Rule and may
27 be ignored. (See Points and Authorities)

28 Sustained: _____

 Overruled: _____

1 6. Declaration of John Raines, paragraph 14

2 (a) The content of the statements is irrelevant
3 to the issue of whether PG&E holds any
4 prescriptive rights for the exclusive use of the
5 space occupied by the High Voltage
6 Transmission Lines. (FRE 401, 402)

7 (b) The statements in this paragraph
8 concerning the lowest height of the line have
9 no foundation and conflict with matters that
10 may be judicially noticed, namely that the
11 transmission lines attached on bars on the
12 towers with lower heights would themselves
13 be lower to the ground. (FRE 201)

14 (c) Declarant Raines makes the statements
15 therein as expression of expert opinions
16 without foundation (FRE 701, 702).

17 (d) The statements of Declarant Raines lack
18 foundation as they rely upon unauthenticated
19 2012 and 2022 “scans” with no testimony
20 concerning the preparation or reliability of
21 those reference documents and with no
22 personal knowledge of the towers, lines, or
23 Komir Property. (FRE 601 and California
24 Evidence Code §702), FRE 901, including
25 901(b)(3)).

26 (e) The statements of Declarant Raines lack
27 foundation as they rely upon 2012 and 2022
28 “scans” as being business records without
29 compliance with the hearsay exception
30 therefor. FRE 803(6)

31 (f) The statements therein are presented in
32 violation of the Sham Affidavit Rule and may
33 be ignored. (See Points and Authorities)

34 Sustained: _____

35 Overruled: _____

1 Declaration of John Raines, paragraph 14,
2 page 4, lines 14 through 18

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4 (a) The content of the statements is irrelevant
5 to the issue of whether PG&E holds any
6 prescriptive rights for the exclusive use of the
7 space occupied by the High Voltage
8 Transmission Lines.(FRE 401, 402)

9 (b) The statements in this paragraph
10 concerning the lowest height of the line have
11 no foundation and conflict with matters that
12 may be judicially noticed, namely that the
13 transmission lines attached on bars on the
14 towers with lower heights would themselves
15 be lower to the ground, and not higher from
16 the ground. (FRE 201)

17 (c) Declarant Raines makes the statements
18 therein as expression of expert opinions
19 without foundation (FRE 701, 702).

20 (d) The statements of Declarant Raines lack
21 foundation as they rely upon unauthenticated
22 2012 and 2022 “scans” with no testimony
23 concerning the preparation or reliability of
24 those reference documents and with no
25 personal knowledge of the towers, lines, or
26 Komir Property. (FRE 601 and California
27 Evidence Code §702), FRE 901, including
28 901(b)(3)).

(e) The statements of Declarant Raines lack
foundation as they rely upon 2012 and 2022
“scans” as being business records without
compliance with the hearsay exception
therefor. FRE 803(6)

(f) The statements therein are presented in
violation of the Sham Affidavit Rule and may
be ignored. (See Points and Authorities)

1 Declaration of John Raines, paragraph 16 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	<p>(a) The content of the statements is irrelevant to the issue of whether PG&E holds any prescriptive rights for the exclusive use of the space occupied by the High Voltage Transmission Lines. (FRE 401, 402)</p> <p>(b) Declarant Raines makes the statements therein as expression of expert opinions without foundation. (FRE 701, 702).</p> <p>(c) Declarant Raines makes the statements of expert opinion concerning “general alignment” with no foundation as to the meaning of “general alignment.” (FRE 701, 702).</p> <p>(d) The statements of Declarant Raines lack foundation as they rely upon unauthenticated “engineering drawings” with no testimony concerning the preparation or reliability of those reference documents and with no personal knowledge of the towers, lines, or Komir Property. (FRE 601 and California Evidence Code §702), FRE 901, including 901(b)(3)).</p> <p>(e) The statements of Declarant Raines lack foundation as they rely upon engineering drawings as being business records without compliance with the hearsay exception therefor. FRE 803(6)</p> <p>(f) The statements therein are presented in violation of the Sham Affidavit Rule and may be ignored. (See Points and Authorities)</p>
23 Declaration of John Raines, all references to the location of the High Voltage Transmission Lines, including paragraphs 13, 14, and 16 as purportedly plotted on the respective Exhibits.	23 Declarant Raines is not a licensed surveyor and not competent to prepare surveys of real property or the incidents thereof. (Business & Professions Code §8761)

Respectfully submitted.

Dated: December 1, 2023

COHEN AND JACOBSON, LLP

By: /s/ Lawrence A. Jacobson
Lawrence A. Jacobson

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